

MARKED UP VERSION

1. A first and second construction for [optional first and second uses of] right and left breast cup supports for a brassiere attached in supporting relation respectively in surrounding relation about a bottom of a cooperating breast cup using VELCRO hook-type and VELCRO loop-type fasteners, said first and second construction comprising for each breast cup a U-shape of shape-imparting construction material serving as each said cup support, a fabric casing in covering relation about said U-shape, a VELCRO hook-type fastener in a strip configuration attached to said fabric casing, and a VELCRO loop-type fastener in a strip configuration attached in an outwardly facing relation in an operative location in surrounding relation about a bottom of a cooperating breast cup and in an interposed position between said brassiere and an upper torso of a wearer of said brassiere, said strips of VELCRO hook-type and VELCRO loop-type fasteners [in an exercise of a first option] having operative positions in face-to-face contact with each other incident to providing breast cup support to said wearer of said brassiere, and [whereby] only in said second construction a removal of said attached cup support [in an exercise of a second option] which exposes said VELCRO loop-type attached strip which is characterized by a nominally felt presence to the touch of said second construction contributing to comfort in the wearing of the brassiere.

It is significant to note that in the Office Action of 12/07/2001 claim 1 was rejected under 35 U.S.C. 112 on indefiniteness in the use of the trademark VELCRO, and that this rejection was withdrawn since it was not repeated in the final rejection of 03/26/2002.

Thus, the recitation in claim 1 of VELCRO hook-type and VELCRO loop-type fasteners are positive recitations of structure, to which applicant has now added also as positive recitations first and second constructions of a brassiere using the VELCRO fasteners. These positive recitations distinguish over Fairbanks et al., and on the issue of anticipation, all limitations of a claim must be considered. See In Re Hiniker Co., 150 F. 3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998)

For the foregoing reasons, the rejection of amended claim 1 should be withdrawn.

Respectfully,

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